

violation of Title 24 Code 1129B.4.1; ADAAG - Section 4.6.3.

5. The van accessible parking spaces do not have assessable aisles. This is in violation of Title 24 Code 1129B.4.2; ADAAG - Section 4.6.3.
6. The entrance door does not provide a symbol of accessibility posted on the door. This is in violation of Title 24 Code 1127B.3.
7. The pipes under the lavatory are not covered. This is in violation of Title 24 Code 1115B.2.1.2.1; ADAAG - Section 4.19.4.
8. There are no visual or auditory alarms in the restrooms. This is in violation of ADAAG - Section 4.28.
9. The center of the water closet is more than 18" from the wall and is not accessible. This is in violation of Title 24 Code 1115B.7.1.2; ADAAG - Section 4.17.3.
10. The restroom door hardware is not compliant. This is in violation of Title 24 Code 1133B.2.5.1; ADAAG - Section 4.13.9.
11. The restroom door force is over 5 lbs. and is not accessible. This is in violation of Title 24 Code 1133B.2.5; ADAAG - Section 4.13.11(2)(b)
12. The toilet stall door hardware is not compliant. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG - Section 4.13.9.
13. The restroom stall door is not wide enough and is not accessible. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG - Section 4.13.5.
14. The restroom does not have the required grab bars. This is in violation of Title 24 Code 1115B. 8.1; ADAAG - Section 4.17.6.
15. The restroom mirror is not compliant. This is in violation of Title 24 Code 1115B.9.2; ADAAG - Section 4.22.6.
16. The lavatory hardware is not compliant. This is in violation of Title 24 Code 1504.2.1; ADAAG - Section 4.19.5.
17. The restroom door closer is not adjusted to allow the bathroom door to remain open for at least three (3) seconds. This is in violation of Title 24 Code 1115B.7.1.4; ADAAG - Section 4.13.10.
18. The restroom signage is not compliant. This is in violation of ADAAG - Section 4.30.

39. The discriminatory violations described above are not an exclusive or exhaustive list of the Defendants' accessibility barriers, and, upon information and belief, there are other miscellaneous violations of both the California Standards and the ADA in Defendants' facilities.

42. As a result of that failure to remedy existing barriers to accessibility, the Plaintiff and others similarly situated have been denied access to the benefits of the goods, services, programs, facilities, and activities of Defendants' markets, and have otherwise been discriminated against and have suffered damages caused by Defendant's accessibility violations. Unless Defendants' markets are brought into compliance, said persons will continue to suffer injury in the future.

46. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever within the jurisdiction of the State of California. The Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

1 57. The CDPA guarantees, *inter alia*, that persons with disabilities are entitled to full
2 and equal access, as other members of the general public, to accommodations, advantages,
3 facilities, and privileges of covered entities.

4 58. Defendants have violated the CDPA by, *inter alia*, denying Plaintiff and members
5 of the proposed class, as persons with disabilities, full and equal access, as other members of the
6 general public, to accommodations, advantages, and facilities offered by Defendants.

7 59. Defendants have violated the CDPA by, *inter alia*, failing to operate their services
8 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
9 nondiscriminatory access to their markets.

10 60. In doing the acts and/or omissions alleged herein, Defendants wrongfully and
11 unlawfully denied access to its markets and its facilities to individuals with disabilities and acted
12 with knowledge of the effect its conduct was having on physically disabled persons.

13 61. Defendants have violated the CDPA by being, as listed above, in violation of both
14 California Standards and the ADA. Plaintiff is not required to prove intent or actual damages to
15 recovery minimum statutory damages under the CPDA.

16 62. Plaintiff is being deterred from patronizing Defendants' markets as a result of her
17 actual knowledge of the violations stated above.

18 63. Pursuant to the remedies, procedures, and rights set forth in California law,
19 including Cal. Civ. Code §§ 54.3 and 55, Plaintiff prays for judgment as set forth below.

20 **COUNT III**
21 **(CAL. CIV. CODE SECTION 55)**

22 64. Plaintiff re-alleges and incorporates by reference all of the above allegations set
23 forth in the Complaint as if fully set forth herein.

24 65. Defendants operate, within the jurisdiction of the State of California, places of
25 public accommodation and/or places to which the general public is invited and, as such, is
26 obligated to comply with the provisions of Cal. Civ. Code § 55, *et seq.*

27 66. The conduct alleged herein violated the Cal. Civ. Code, § 55, *et seq.* and relevant
28 provisions of the California building code regulations.

67. Plaintiff brings this claim to enjoin any technical violations of the California Standards or access laws.

68. In order to enjoin the aforementioned violations, Plaintiff is not required to prove an actual attempt to access Defendants' markets or to prove that the violation results from discrimination.

69. Pursuant to the remedies, procedures, and rights set forth in California law, including Cal. Civ. Code § 55, Plaintiff prays for judgment as set forth below.

COUNT IV

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

70. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein. This Count is brought on behalf of the Class against Defendant.

71. Pursuant to 42 U.S.C. Section 12181(7) and 28 C.F.R. Section 36.104, Defendant owns and/or operate places of public accommodation comprising various facilities which provide document services to the general public. All of Defendant's facilities are public accommodations and are covered by the ADA.

72. The ADA defines illegal discrimination to include, in pertinent part:

- (a) Failure to remove architectural barriers . . . that are structural in nature, in Existing facilities . . . where such removal is readily achievable;
- (b) With respect to a facility or part thereof that is altered . . . in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affect or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path or travel to the altered area . . . [is] readily accessible to and usable by individuals with disabilities where such alterations to the path or travel . . . are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General); and

- 1 (c) failure to design and construct facilities for first occupancy later than 30
2 months after July 26, 1990 that are readily accessible to and usable by
3 individuals with disabilities.

4 73. Defendants have been and continue to be required to remove architectural barriers
5 to the physically disabled where such removal is readily achievable for their places of public
6 accommodation that have existed prior to January 26, 1992, 28 C.F.R. Section 36.304(a); in the
7 alternative, if there has been an alteration to any of Defendants' places of public accommodation
8 since January 26, 1992, then Defendants are required to ensure to the maximum extent feasible
9 that the altered portions of the facility are readily accessible to and usable by individuals with
10 disabilities, including individuals who use wheelchairs, 28 C.F.R. 36.402; and, finally, if any of
11 the Defendants' facilities are one which was designed and constructed for first occupancy
12 subsequent to January 26, 1993, as defined in 28 C.F.R. 36.401, then such facility must be
13 readily accessible to and usable by individuals with disabilities as defined by the ADA.

14 74. Appendix A to Part 36-Standards for Accessible Design (28 C.F.R. pt. 36, App.
15 A) sets out guidelines for accessibility for buildings and facilities. These guidelines are to be
16 applied during design, construction and alteration of such buildings and facilities to the extent
17 required by regulations issued by Federal agencies, including the Department of Justice, under
18 the ADA.

19 75. Defendants have discriminated against Plaintiff, and others who are similarly
20 situated, by denying access to full and equal enjoyment of the goods, services, facilities,
21 privileges, advantages and/or accommodations of their places of public accommodation or
22 commercial facilities in violation of 42 U.S.C. Section 12181 et seq. and 28 C.F.R. 36.302 et
23 seq., as described below.

24 76. Defendants have discriminated and are discriminating against Plaintiff and others
25 similarly situated, in violation of the ADA, by failing to, inter alia, have accessible facilities, as
26 described above, by January 26, 1992.
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1 77. The discriminatory violations described above are not an exclusive or exhaustive
2 list of the Defendant's ADA violations, and, upon information and belief, there are other
3 miscellaneous violations of the ADA and regulations promulgated pursuant thereto in
4 Defendants' facilities.

5 78. The correction of these violations of the ADA are readily achievable, or
6 Defendants are obligated to have their places of public accommodation readily accessible as
7 defined by the ADA.

8 79. To date, barriers and other violations of the ADA still exist and have not been
9 remedied or altered in such a way as to effectuate compliance with the provisions of the ADA.
10 The effect of Defendants' failure to comply with the ADA is that the Defendant have
11 discriminated against disabled persons by denying them the full and equal enjoyment of the
12 goods, services, programs, facilities, privileges, advantages, or accommodations.

13 80. As a result of that failure to remedy existing barriers to accessibility, the Plaintiffs
14 and others similarly situated have been denied access to, and the benefits of the goods, services,
15 programs, facilities, and activities of Defendants' markets, and have otherwise been
16 discriminated against and have suffered damages caused by Defendants' ADA violations.
17 Unless Defendant's markets are brought into compliance with the ADA, said persons will
18 continue to suffer injury in the future.

19 81. Further, Defendants have violated the ADA by having, maintaining, establishing,
20 or failing to abolish policies that discriminate against the mobility impaired which have result in
21 discriminatory barriers within their markets. This includes, inter alia, failing to survey and
22 remediate non-accessible restrooms until the company completes a major remodel of a store.

23 82. Plaintiff, and others similarly situated, either regularly enter and/or use
24 Defendants' markets, would like to enter and/or use Defendants' markets, or may enter and/or
25 use Defendants' markets in the future. Plaintiff is ready, willing and able to patronize
26 Defendants' markets when the discriminatory policies and barriers are removed or cured.

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1 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
2 relief:

- 3 A. that this Court certify the proposed Class;
- 4 B. that this Court certify Plaintiff as class representatives on behalf of the
- 5 Class;
- 6 C. that this Court declare that the policies, procedures, and services, and
- 7 facilities at the Defendants' markets located in California have been
- 8 discriminatory and violative of the ADA and therefore are violative of the
- 9 Unruh Civil Rights Act and the California Disabled Persons Act;
- 10 D. that this Court declare that the policies, procedures, services, and facilities
- 11 of Defendants are discriminatory and violative of the state anti-
- 12 discrimination statutes of California and the California Standards;
- 13 E. that this Court declare that Defendants' violation of the state anti-
- 14 discrimination statutes of California was intentional.
- 15 F. that this Court Order injunctive relief to require Defendants to become in
- 16 compliance and remain in compliance with state anti-discrimination
- 17 statutes.
- 18 G. that this Court award minimum statutory damages on behalf of the Class
- 19 against Defendants pursuant to the state statutes identified above;
- 20 H. that this Court award reasonable attorneys' fees and costs (including
- 21 expert fees) and other expenses of suit; and
- 22 I. that this Court award such other and further relief as it deems necessary,
- 23 just, proper, and appropriate.
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PROOF OF SERVICE

Velasco v. The Whole Foods Market, Inc., et. al.
BC 428347

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF MONTGOMERY)

I, Evan J. Smith, Esquire, declare:

I am over the age of eighteen years, and not a party to the within action; my California business address is 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 and my Pennsylvania business address is Two Bala Plaza, Suite 602, Bala Cynwyd, PA 19004. On December 10, 2010, I served the within documents:

Second Amended Class Action Complaint, Notice to Property Owner as attached to the Stipulation for Leave of Court to file Second Amended Complaint.

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. PST.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Bala Cynwyd, PA, addressed as set forth below.

Derek Havel, Esquire
Sheppard Mullin
333 S. Hope Street, 43rd Floor
Los Angeles, CA 90071-1448

Attorneys for Defendant Mrs. Gooch's
Natural Food Markets, Inc.

☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 10, 2010 at Bala Cynwyd, PA.


Evan J. Smith, Esquire